

Chapter 194. Stormwater Management

[HISTORY: Adopted by the Special Town Meeting of the Town of Fairhaven 5-4-2019 by Art. 12. Amendments noted where applicable.]

GENERAL REFERENCES

Wetlands — See Ch. **192**.

Zoning — See Ch. **198**.

Subdivision of land — See Ch. **322**.

§ 194-1. Authority.

This chapter is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

§ 194-2. Purpose.

- A. The purpose of this chapter is to provide for the public health, safety, and general welfare of the residents of the Town of Fairhaven, the protection of Fairhaven's water bodies and groundwater, and the protection of Fairhaven's natural resources through the regulation of nonstormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.
- B. Increased and contaminated stormwater runoff associated with developed land uses and the accompanying increase in impervious surface are major causes of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, and groundwater. The harmful impacts of illicit discharge, soil erosion, and sedimentation are:
 - (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands, groundwater, and drinking water supplies;
 - (2) Contamination of drinking water supplies;
 - (3) Erosion of stream channels and downstream coastal areas;
 - (4) Alteration or destruction of aquatic and wildlife habitat;
 - (5) Flooding;
 - (6) Overloading or clogging of municipal stormwater management systems.
- C. The objectives of this chapter are to:
 - (1) Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
 - (2) Prohibit illicit connections and unauthorized discharges to the municipal separate storm sewer system and require their removal;
 - (3) Protect water resources;
 - (4) Require practices that eliminate soil erosion and sedimentation;

- (5) Control the volume and rate of stormwater runoff resulting from land-disturbance activities in order to minimize potential impacts of flooding;
- (6) Require practices to manage and treat stormwater runoff generated from new development and redevelopment;
- (7) Establish minimum construction and post-construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- (8) Protect groundwater and surface water from degradation;
- (9) Promote infiltration and the recharge of groundwater;
- (10) Maximize recharge of groundwater in the Fairhaven Aquifer Protection District.
- (11) Prevent pollutants from entering the Town's municipal separate storm sewer system (MS4) and reduce or eliminate pollutants entering the Town's MS4 from existing users;
- (12) Ensure that soil erosion and sedimentation control measures and stormwater runoff management practices are incorporated into the site planning and design process and are implemented and maintained;
- (13) Ensure adequate long-term operation and maintenance of structural stormwater best management practices;
- (14) Require practices to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality;
- (15) Comply with state and federal statutes and regulations relating to stormwater discharges, including total maximum daily load requirements;
- (16) Establish the Town of Fairhaven's legal authority to ensure compliance with the provisions of this chapter through inspection, monitoring and enforcement; and
- (17) Support Chapter **198**, § **198-31** (Earth removal regulations), Chapter **198**, § **198-31.1** and Chapter **322**, § **322-26** (Stormwater management).

§ 194-3. Definitions.

For the purposes of this chapter, the following shall mean:

ABUTTER

The owner(s) of land abutting the lot or lots on which activity regulated by this chapter is occurring or proposed.

AGRICULTURE

The normal maintenance or improvement of land in agricultural or aquaculture use, as defined by the Massachusetts Wetlands Protection Act and its implementing regulations.

ALTERATION OF DRAINAGE CHARACTERISTICS

Any activity on an area of land that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.

APPLICANT

Any "person" as defined below requesting a soil erosion and sediment control permit for proposed land-disturbance activity or a permit relating to or involving stormwater management.

BEST MANAGEMENT PRACTICES (BMPs)

An activity, procedure, restraint, or structural improvement that helps to reduce the quantity of or improve the quality of stormwater runoff; schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and

practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

BOARD OF PUBLIC WORKS

The Board of Public Works for the Town of Fairhaven and its employees, agents or others designated by that Board to enforce this chapter.

CLEAN WATER ACT

The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CLEARING

Any activity that removes the vegetative surface cover. Clearing activities generally include grubbing activity as defined below.

CONSTRUCTION ACTIVITY

The erection or placement of a building or other structure, or the placement of any impervious surface, in or on the ground, or site preparation for such activities, including, but not limited to, activities subject to NPDES construction permits as laid out in the eligibility conditions of the permit.

CONSTRUCTION AND WASTE MATERIALS

Excess or discarded building or site materials, including but not limited to concrete truck washout, chemicals, litter and sanitary waste at a construction site that may adversely impact water quality.

DEVELOPMENT

The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISCHARGE OF POLLUTANTS

The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or commonwealth from any source.

DISTURBANCE OF LAND

Any action, including clearing and grubbing, that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.

ENVIRONMENTAL SITE MONITOR

A registered professional engineer or other trained professional selected by the Conservation Commission and retained by the holder of a minor land-disturbance permit or a full land-disturbance permit to periodically inspect the work and report to the Conservation Commission and/or Planning Board.

EROSION

The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.

EROSION AND SEDIMENTATION CONTROL PLAN

A document containing narrative, drawings and details developed by a registered professional engineer (PE), registered professional land surveyor (PLS), or a certified professional in erosion and sedimentation control (CPESC) which includes best management practices, or equivalent measures designed to control surface runoff, erosion and sedimentation during pre-construction- and construction-related land-disturbance activities.

EROSION CONTROL

The prevention or reduction of the movement of soil particles or rock fragments due to stormwater runoff.

ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS

Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act regulations (310 CMR 10.00) and the Forest Cutting Practices Act regulations (302 CMR 16.00).

FLOODING

A local and temporary inundation or rise in the surface of a body of water, such that it covers land not usually under water.

GRADING

Changing the level or shape of the ground surface.

GROUNDWATER

Water beneath the surface of the ground.

GRUBBING

The act of clearing land surface by digging or grinding up roots and stumps.

HAZARDOUS OR TOXIC MATERIAL OR WASTE

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, corrosive, flammable, reactive, toxic, radioactive, or infectious characteristics, either separately or in combination with any substance or substances, may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, welfare, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as "toxic" or "hazardous" under MGL c. 21C and MGL c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

ILLEGAL DISCHARGE

Any direct or indirect nonstormwater discharge to the storm drain system, except as exempted in this chapter.

ILLICIT CONNECTION

An illicit connection is defined as either of the following: any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge into the municipal storm drain system, including but not limited to any conveyances which allow any nonstormwater discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains, sinks or toilets, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency before the effective date of this chapter, or any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLICIT DISCHARGE

Direct or indirect discharge to the municipal storm drain system or a watercourse or the waters of the commonwealth that is not composed entirely of stormwater, except for projects exempted by this chapter or by regulations issued thereunder. The term does not include a discharge in compliance with an NPDES stormwater discharge permit or resulting from firefighting activities.

IMPERVIOUS SURFACE

Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

IMPOUNDMENT

A stormwater pond created by either constructing an embankment or excavating a pit which retains a permanent pool of water.

INDUSTRIAL ACTIVITY

Activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

INFILTRATION

The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

LAND-DISTURBING ACTIVITY or LAND DISTURBANCE

Any activity, including without limitation: clearing, grubbing, grading, digging, cutting, excavation of soil, placement of fill, and construction that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.

LOAD ALLOCATION or WASTE LOAD ALLOCATION

The maximum concentration or mass of a pollutant which can be discharged to a waterway from nonpoint sources without causing a violation of surface water quality standards as established in an applicable total maximum daily load (TMDL).

LOT

A single parcel of land held in identical ownership throughout and defined by metes, bounds, or boundary lines in a recorded deed or on a recorded plan.

MASSACHUSETTS ENDANGERED SPECIES ACT

MGL c. 131A and its implementing regulations at 321 CMR 10.00 which prohibit the "taking" of any rare plant or animal species listed as endangered, threatened, or of special concern.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY

The policy issued by the Department of Environmental Protection, as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act, MGL c. 131 § 40 and the Massachusetts Clean Waters Act, MGL c. 21, §§ 23 through 56. The policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

MUNICIPAL STORM DRAIN SYSTEM or MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or human-made or -altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Fairhaven.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT

A permit issued by the United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters of the United States.

NONSTORMWATER DISCHARGE

Discharge to the municipal storm drain system not composed entirely of stormwater.

OPERATION AND MAINTENANCE PLAN

A plan describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

OUTFALL

The point at which stormwater flows out from a discernible, confined point source or discrete conveyance into waters of the commonwealth.

OUTSTANDING RESOURCE WATERS (ORWs)

Waters designated by the Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Surface Water Quality Standards (314 CMR 4.00) and the Massachusetts Stormwater Management Standards set forth in the Massachusetts Stormwater Management Policy. ORWs include vernal pools certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

OWNER

A person with a legal or equitable interest in property.

PERMITTEE

The person who holds a land-disturbance permit and therefore bears the responsibilities and enjoys the privileges conferred thereby.

PERSON

An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POINT SOURCE

Any discernible, confined, and discrete means of conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

POLLUTANT

Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, whether originating at a point or nonpoint source, that is considered toxic or detrimental to humans or the environment and is or may be introduced into the municipal storm drain system or any sewage treatment works, or into any water, watercourse or waters of the commonwealth. Pollutants shall include without limitation:

A. Paints, varnishes, and solvents;

- B. Oil and other automotive fluids;
- C. Nonhazardous liquid and solid wastes and yard wastes;
- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnance, accumulations, and floatables;
- E. Pesticides, herbicides, and fertilizers;
- F. Hazardous materials and wastes;
- G. Sewage, fecal coliform, and pathogens;
- H. Dissolved and particulate metals;
- I. Animal wastes;
- J. Rock; sand; salt; soils;
- K. Construction wastes and residues; and
- L. Noxious or offensive matter of any kind.

PRE-CONSTRUCTION

All activity in preparation for construction.

PREMISES

Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

PRIORITY HABITAT OF RARE SPECIES

Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act^[1] and its regulations.

PROCESS WASTEWATER

Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

RECHARGE

The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

REDEVELOPMENT

Development, rehabilitation, expansion, demolition or phased projects that disturb the ground surface, including impervious surfaces, on previously developed sites. The creation of new areas of impervious surface or new areas of land disturbance on a site constitutes development, not redevelopment, even where such activities are part of a common plan which also involves redevelopment. Redevelopment includes maintenance and improvement of existing roadways, including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved stormwater management, such as projects to separate storm drains and sanitary sewers and stormwater retrofit projects.

RESPONSIBLE PARTIES

Owners, persons with financial responsibility, persons with operational responsibility, and persons with administrative responsibility.

RUNOFF

Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENT

Mineral or organic soil material that is transported by wind or water from its origin to another location; the product of erosion processes.

SEDIMENTATION

The process or act of deposition of sediment.

SITE

Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

SLOPE

The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.

SOIL

Any earth, sand, rock, gravel, or similar material.

STABILIZATION

The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.

STORMWATER

Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORMWATER MANAGEMENT PLAN

A document containing narrative, drawings and details prepared by a registered professional engineer (PE), a registered professional land surveyor (PLS), or a certified professional in erosion and sedimentation control (CPESC) which includes structural and nonstructural best management practices and activities to identify sources of pollution or contamination and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems and/or receiving waters to the maximum extent practicable, and to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an operation and maintenance plan describing the maintenance requirements for structural best management practices.

STRIP

Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.

TOTAL MAXIMUM DAILY LOAD or TMDL

A plan required under the Clean Water Act^[2] for a pollutant which causes or contributes to a violation of state surface water quality standards in a specific geographic area, and which establishes the maximum amount of that pollutant (referred to as the load allocation and waste load allocation) which may be discharged to the affected waters of the commonwealth by one or more categories of users without violating state surface water quality standards.

TOTAL SUSPENDED SOLIDS or TSS

Material, including but not limited to trash, debris, and sand, suspended in stormwater runoff.

VERNAL POOLS

Temporary bodies of freshwater which provide critical habitat for a number of vertebrate and invertebrate wildlife species.

WASTEWATER

Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning, or processing comes into direct contact with or results from the production or use of any material, intermediate product, finished product, by-product, or waste product.

WATERCOURSE

A natural or human-made channel through which water flows, including a river, brook, stream, underground stream, pond or lake.

WATERS OF THE COMMONWEALTH

All waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

WETLAND RESOURCE AREA

Area specified in the Massachusetts Wetlands Protection Act MGL c. 131, § 40, and in the Town of Fairhaven Wetlands Protection Bylaw.^[3]

WETLANDS

Tidal and nontidal areas characterized by saturated or nearly saturated soils most of the year that are located between terrestrial (land-based) and aquatic (water-based) environments, including freshwater marshes around ponds and channels (rivers and streams), brackish and salt marshes; common names include marshes,

swamps and bogs. Freshwater wetland, marsh, bog, wet meadow and swamp are defined in MGL c. 131, § 40, and are collectively known as vegetated wetlands. Credible evidence as to wetland affinities of other vegetation in an area shall be considered in making wetland determinations.

- [1] *Editor's Note: See MCL c. 131A, § 1 et seq.*
- [2] *Editor's Note: See 33 U.S.C. § 1251 et seq.*
- [3] *Editor's Note: See Ch. 192, Wetlands.*

§ 194-4. Applicability.

This chapter shall apply to land-disturbing activities on any developed and undeveloped land within the jurisdiction of the Town of Fairhaven and water and other materials entering the Town of Fairhaven municipal storm drain system. Land disturbance of 40,000 square feet or more in area is hereby prohibited except in compliance with this chapter. The discharge of any substance other than stormwater into the municipal stormwater system is hereby prohibited except in compliance with this chapter.

A. Regulated land-disturbance activities.

(1) Regulated activities shall include, but not be limited to:

- (a) Land disturbance of greater than 40,000 square feet, associated with construction or reconstruction of structures;
- (b) Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that all together disturbs 40,000 square feet or more of land;
- (c) Paving, repaving or other change in surface material over an area of 40,000 square feet or more causing a significant reduction of permeability or increase in runoff;
- (d) Construction of a new drainage system or alteration of an existing drainage system or conveyance serving a drainage area of more than 40,000 square feet;
- (e) Any other activity altering the surface of an area exceeding 40,000 square feet that will, or may, result in increased stormwater runoff flowing from the property into a public way or the municipal storm drain system; or
- (f) Construction or reconstruction of a structure or structures with more than 40,000 square feet of roof drainage, or combined roof and surface drainage.

(2) Erosion and sedimentation control requirement. A project which includes land disturbance of less than 40,000 square feet shall be considered to be in conformance with this chapter if soils or other eroded matter have been or will be prevented from being deposited onto adjacent properties, rights-of-way, public storm drainage systems, or wetlands or watercourses. The design, installation, and maintenance of erosion and sediment control operations and facilities shall adhere to the standards specified in the regulations to this chapter.

(3) Exempted projects. Notwithstanding the provisions of above, the procedural requirements of this chapter shall not apply to activities which have been approved by the Planning Board or the Conservation Commission, provided that the applicant has submitted to the Board of Public Works a written determination from the Planning Board or the Conservation Commission that the project complies with the performance standards otherwise required by this chapter.

B. Discharge prohibitions.

(1) Prohibition of illegal discharges: No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- (a) Water line flushing;
 - (b) Flow from other potable water sources;
 - (c) Landscape irrigation or lawn watering;
 - (d) Diverted stream flows;
 - (e) Rising groundwater;
 - (f) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(b)(20);
 - (g) Uncontaminated pumped groundwater (e.g., sump pump), provided that where a pump intake exists inside a structure, the operator seeks a permit from the Board of Public Works prior to discharge and thereafter discharges in accordance with the requirements of the permit and applicable laws and regulations;
 - (h) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air-conditioning condensation;
 - (i) Noncommercial washing of vehicles;
 - (j) Springs, natural riparian habitat or wetland flows;
 - (k) Discharge from swimming pool water (if dechlorinated—typically less than one ppm chlorine), provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
 - (l) Discharge from street sweeping;
 - (m) Firefighting activities;
 - (n) Dye testing is an allowable discharge, but requires a verbal notification to the Board of Public Works prior to the time of the test;
 - (o) Discharges specified in writing by the Board of Public Works as being necessary to protect public health, safety, welfare, or the environment; and
 - (p) The prohibition shall not apply to any nonstormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharge is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (2) Suspension of MS4 access.
- (a) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Board of Public Works will notify a violator of the proposed termination of its MS4 access.
 - (b) Suspension due to illicit discharges in emergency situations. The violator may petition the Board of Public Works for a reconsideration and hearing. Any person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the Board of Public Works.
 - (c) The Board of Public Works may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Board of Public Works may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.
- (3) Industrial or construction activity discharges: Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance

with said permit may be required in a form acceptable to the Board of Public Works prior to the allowing of discharges to the MS4.

C. Exempt activities. The following activities are exempt from the requirements of this chapter:

- (1) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act (MGL c. 131, § 40) and its associated regulations (310 CMR 10.00).
- (2) Repair of septic systems when required by the Board of Health for the protection of public health and compliance with Subsection B.
- (3) Normal maintenance of existing landscaping, gardens or lawn areas associated with a single-family dwelling, provided such maintenance does not include the addition of more than 50 cubic yards of soil material, construction of any walls, alteration of existing grades by more than one foot in elevation, or alteration of drainage patterns.
- (4) The construction of fencing that will not alter existing terrain or drainage patterns.
- (5) Construction of utilities other than drainage (gas, water, electric, telephone, etc.) that will not alter terrain or drainage patterns.

§ 194-5. Administration.

The Board of Public Works shall administer, implement and enforce this chapter. Any powers granted to or duties imposed upon the Board of Public Works through this chapter may be delegated in writing by the Board of Public Works to its employees or agents.

§ 194-6. Regulations.

The Board of Public Works may adopt, and periodically amend, rules, regulations, and/or written guidance to effectuate the purposes of this chapter. Failure by the Board of Public Works to promulgate such rules and regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this chapter. Such regulations, rules or guidance may include, without limitation, provisions for the establishment of one or more categories of administrative review approvals for specific types or sizes of projects. Administrative review applications that meet all the standard requirements may be issued by one or more agents designated in writing by the Board of Public Works, without the requirement for a public hearing as detailed in this chapter. Administrative review approval shall comply with all other provisions of this chapter.

§ 194-7. Land-disturbance permits.

Permit issuance is required prior to any activity disturbing 40,000 or more square feet of land. The site owner or his agent shall apply for the permit with the Board of Public Works. While application may be made by a representative, the permitted must be the owner of the site.

- A. Applications. An application shall be made to the Board of Public Works in a form and containing information as specified in this chapter and in the regulations adopted by the Board of Public Works and shall be accompanied by payment of the appropriate application and review fees.
- B. Fees. Fees shall be established by Board of Public Works to cover expenses connected with public notice, application review, and monitoring permit compliance. The fee shall be sufficient to also cover professional review. The Board of Public Works is authorized to retain a registered professional engineer or other professional consultant to advise the Board of Public Works on any or all aspects of these plans. Applicants must pay review fees before the review process may begin.
- C. Information requests. The Board of Public Works may request such additional information as is necessary to enable the Board of Public Works to determine whether the proposed land-disturbance activity will protect water resources and comply with the requirements of this chapter.
- D. Determination of completeness. The Board of Public Works shall make a determination as to the completeness of the application and adequacy of the materials submitted. No review shall take place until the application has been found to be complete.

- E. Coordination with other boards. On receipt of a complete application for a land-disturbance permit, the Board of Public Works shall distribute one copy each to the Planning Board, Department of Public Works, Board of Health, and the Building Inspector for review and comment. Said agencies shall, in their discretion, investigate the case and report their recommendations to the Board of Public Works. The Board of Public Works shall not hold a hearing on the land-disturbance permit until it has received reports from said agencies or until said agencies have allowed 45 days to elapse after receipt of the application materials without submission of a report thereon.
- F. Entry. Filing an application for a land-disturbance permit grants the Board of Public Works or its agent permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions, to the extent permitted by law.
- G. Hearing. Once in receipt of a complete application for a land-disturbance permit, the Board of Public Works shall hold a public hearing and shall take final action within 90 days from the close of the hearing unless such time is extended by agreement between the applicant and the Board of Public Works. Notice of the public hearing shall, at least seven business days prior to said hearing, be given by publication in a local paper of general circulation, and by posting. The Board of Public Works shall be responsible for publishing the notice in a newspaper of general circulation in the city or Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of said hearing, and posting the notice at the Town Hall. The Board of Public Works shall make the application available for inspection by the public during business hours at their Town of Fairhaven Office.
- H. Action. The Board of Public Works may:
 - (1) Approve the application and issue a permit if it finds that the proposed plan will protect water resources and complies with the requirements of this chapter;
 - (2) Approve the application and issue a permit with conditions, modifications or restrictions that the Board of Public Works determines are required to ensure that the project will protect water resources and complies with the requirements of this chapter; or
 - (3) Disapprove the application and deny a permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives of and to comply with the requirements of this chapter. If the Board of Public Works finds that the applicant has submitted insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the Board of Public Works may disapprove the application, denying a permit.
- I. Project changes. The permittee, or his or her agent, must notify the agent of the Board of Public Works in writing of any change or alteration of a land-disturbing activity before the change or alteration occurs. If the agent of the Board of Public Works determines that the change or alteration is significant, the agent of the Board of Public Works may require that an amended application or a full application be filed in accordance with this section. If any change or alteration from the land-disturbance permit occurs during land-disturbing activities, the agent of the Board of Public Works may require the installation of interim erosion and sedimentation control measures before approving the change or alteration.
- J. Waivers.
 - (1) Following a public hearing on a waiver request, the Board of Public Works may waive strict compliance with any requirement of this chapter or the rules and regulations promulgated hereunder, where:
 - (a) Such action is allowed by federal, state, and local statutes and/or regulations; and
 - (b) Is in the public interest; and
 - (c) Is not inconsistent with the purpose and intent of this chapter.
 - (2) Any applicant must submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the chapter does not further the purposes or objectives of this chapter.
 - (3) All waiver requests shall be discussed and voted on at the public hearing for the project.
 - (4) If, in the Board of Public Works' opinion, additional time or information is required for review of a waiver request, the Board of Public Works may continue a hearing to a certain date announced at the meeting. In

the event the applicant objects to a continuance, or fails to provide requested information, the waiver request shall be denied.

§ 194-8. Erosion and sedimentation control plan.

- A. The erosion and sediment control plan should include a written description of the plan as well as an emergency response outline (including response phone numbers) and a maintenance schedule. The plan shall meet the following objectives and criteria:
- (1) Keep disturbed areas small: no more than 60 feet in width and 100 feet in length of a single lot, or five acres of the overall tract at one time. Said plan shall identify design issues and methods employed to address such items as topography, soils, vegetation, steep slopes, wetlands and water bodies.
 - (2) Stabilize and protect disturbed areas quickly: Exposed areas and stockpiles shall be revegetated within 40 days of being exposed. The Board of Public Works, depending on weather conditions, may require slope and stockpile stabilization sooner. Methods for stabilizing disturbed areas include mechanical, structural, and vegetative. In some cases, some or all of these methods should be combined in order to retard erosion. These methods shall be identified in the erosion and sedimentation control plan.
 - (3) Keep stormwater runoff velocities low: Velocities of runoff should be in the range of two to 10 feet per second. The removal of the existing vegetative cover during the development and the resulting increase in impermeable surface area after development will increase both the volume and velocity of runoff. These increases must be taken into account when providing for erosion control.
 - (4) Protect disturbed areas from stormwater runoff: Conservation measures can be utilized to prevent water from entering and running over the disturbed area. Diversions and other control practices to intercept runoff from higher elevations, store or divert it away from vulnerable areas, and direct it towards stabilized outlets should be utilized. Selected measures should be identified on the plan and in text.
 - (5) Retain sediment within site area: The best way to control sediment is to prevent erosion; however, sediment can be retained by two methods:
 - (a) Filtering runoff as it flows and detaining sediment; or
 - (b) Detain runoff for a period of time so that the soil particles settle out.

§ 194-9. Stormwater management plan.

The stormwater management plan shall contain sufficient information to describe the nature and purpose of the proposed development, pertinent conditions of the site and the adjacent areas, and proposed best management practices for the permanent management and treatment of stormwater. The stormwater management plan shall contain sufficient information for the Board of Public Works to evaluate the environmental impact, effectiveness, and acceptability of the measures proposed by the applicant for reducing adverse impacts from stormwater. The plan shall be designed to meet the Massachusetts Stormwater Management Standards set forth in the Massachusetts Stormwater Management Policy and DEP Stormwater Management Handbook Volumes I and II. The stormwater management plan shall fully describe the project in drawings, and narrative. The applicant shall submit such material as is required for the administration of this chapter.

§ 194-10. Operation and maintenance plans.

- A. An operation and maintenance plan (O&M plan) for the permanent stormwater management system is required at the time of application for all projects. The maintenance plan shall be designed to ensure compliance with this chapter and that the Massachusetts Surface Water Quality Standards contained in 314 CMR 4.00 are met in all seasons and throughout the life of the system. The operation and maintenance plan shall include any requirements deemed necessary by the Board of Public Works to insure compliance with said plan, including without limitation a covenant. The Board of Public Works shall make the final decision of what maintenance option is appropriate in a given situation. The Board of Public Works will consider natural features, proximity of site to water bodies and wetlands, extent of impervious surfaces, size of the site, the types of stormwater management structures, and potential need for ongoing maintenance activities when making this decision. Once approved by the Board of Public Works, the operation and maintenance plan shall be recorded at the Bristol County Registry of Deeds by the permittee, shall run with the land, shall remain on file with the Board of

Public Works and shall be an ongoing requirement. The operation and maintenance plan shall conform to the requirements listed in the regulations adopted by the Board of Public Works for the administration of this chapter. Stormwater management easements shall be provided by the property owner(s) in areas and as necessary to carry out the required maintenance.

B. Changes to operation and maintenance plans.

- (1) The owner(s) of the stormwater management system must notify the Board of Public Works or its agent of changes in ownership or assignment of financial responsibility.
- (2) The maintenance schedule in the maintenance agreement may be amended to achieve the purposes of this chapter by mutual agreement of the Board of Public Works and the responsible parties. Amendments must be in writing and signed by all responsible parties.

§ 194-11. Inspection and site supervision.

- A. Pre-construction meeting. Prior to clearing, excavation, construction, or any land-disturbing activity requiring a permit, the applicant, the applicant's technical representative, the general contractor, pertinent subcontractors, and any person with authority to make changes to the project, shall meet with the Board of Public Works or its designated agent to review the permitted plans and proposed implementation.
- B. Commission inspection. The Board of Public Works or its designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the approved plans and any conditions of approval. One copy of the approved plans and conditions of approval, signed by the Board of Public Works shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the agent of the Board of Public Works at least three working days before each of the following events:
 - (1) Erosion and sediment control measures are in place and stabilized;
 - (2) Rough grading has been substantially completed;
 - (3) Final grading has been substantially completed;
 - (4) Bury inspection: prior to backfilling of any underground drainage or stormwater conveyance structures;
 - (5) Close of the construction season; and
 - (6) Final landscaping (permanent stabilization) and project final completion.
- C. Permittee inspections. The permittee or his/her agent shall conduct and document inspections of all control measures no less than weekly or as specified in the permit, and prior to and following anticipated storm events. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for maintenance or additional control measures. The permittee or his/her agent shall submit monthly reports to the Board of Public Works or designated agent in a format approved by the Board of Public Works. The Board of Public Works may require, as a condition of approval, that an environmental site monitor, approved by the Board of Public Works, be retained by the applicant to conduct such inspections and prepare and submit such reports to the Board of Public Works or its designated agent.
- D. Access permission. To the extent permitted by law, or if authorized by the owner or other party in control of the property, the Board of Public Works, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the Board of Public Works deems reasonably necessary to determine compliance with the permit.

§ 194-12. Surety.

The Board of Public Works may require the permittee to post, before the start of land-disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by Town Counsel, and be in an amount deemed sufficient by the Board of Public Works to insure that the work will be completed in accordance with the permit. If the project is phased, the Board of Public Works may release part of the

bond as each phase is completed in compliance with the permit, but the bond may not be fully released until the Board of Public Works has received the final report as required by § 194-13 and issued a certificate of completion.

§ 194-13. Final reports.

Upon completion of the work, the permittee shall submit a report (including certified as-built construction plans) from a registered professional engineer (PE), registered professional land surveyor (PLS), or a certified professional in erosion and sedimentation control (CPESC) certifying that all erosion and sedimentation control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved land-disturbance permit. Any discrepancies should be noted in the cover letter.

§ 194-14. Certificate of completion.

The Board of Public Works will issue a certificate of completion upon receipt and approval of the final reports and/or upon otherwise determining that all work of the land disturbance permit has been satisfactorily completed in conformance with this chapter. The certificate of completion shall be recorded at the Registry of Deeds by the owner(s).

§ 194-15. Monitoring of discharges.

- A. Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.
- B. Access to facilities.
 - (1) The Board of Public Works shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Board of Public Works.
 - (2) Facility operators shall allow the Board of Public Works ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
 - (3) The Board of Public Works shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Board of Public Works to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (4) The Board of Public Works has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Board of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 - (6) Unreasonable delays in allowing the Board of Public Works access to a permitted facility is a violation of a stormwater discharge permit and of this chapter. A person who is the operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Board of Public Works reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.
 - (7) If the Board of Public Works has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Board of Public Works may seek issuance of a search warrant from any court of competent jurisdiction.

§ 194-16. Requirement to prevent, control, and reduce stormwater pollutants by use of best management practices.

The Board of Public Works will adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

§ 194-17. Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

§ 194-18. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the Board of Public Works in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Board of Public Works within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 194-19. Enforcement.

- A. The Board of Public Works or an authorized agent of the Board of Public Works shall enforce this chapter, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.
- B. Orders.
 - (1) The Board of Public Works or an authorized agent of the Board of Public Works may issue a written order to enforce the provisions of this chapter or the regulations thereunder, which may include:
 - (a) A requirement to cease and desist from the violating activity until there is compliance with the chapter and any existing permits.
 - (b) Maintenance, installation or performance of additional erosion and sedimentation control measures.
 - (c) Monitoring, analyses, and reporting.
 - (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity.

- (e) The elimination of illicit connections or discharges.
 - (f) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property.
- (2) If the enforcing person determines that abatement or remediation of erosion and sedimentation, stormwater pollution or contamination hazards is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Fairhaven may, at its option, undertake such work, and the property owner shall reimburse the Town's expenses.
 - (3) Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the Town of Fairhaven, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board of Public Works within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the Board of Public Works affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs.
 - (4) Such special assessment shall constitute a lien for the purpose of MGL c. 40, § 58.
[Amended 11-12-2019 STM by Art. 12]
- C. Criminal penalty. Any person who violates any provision of this chapter, or regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300 for each offense. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
 - D. Noncriminal disposition. As an alternative to criminal prosecution or civil action, the Town of Fairhaven may elect to utilize the noncriminal disposition procedure, in which case the Board of Public Works or authorized agent shall be the enforcing person. The penalty for each violation shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
 - E. Appeals. All decisions or orders of the Board of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.
 - F. Remedies not exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law.

§ 194-20. Compliance with provisions of EPA's general permit for MS4s in Massachusetts.

This chapter shall be implemented by the Board of Public Works in accordance with the requirements of the EPA's most recent general permit for MS4s in Massachusetts relating to illicit connections and discharges, construction site runoff, and post-construction stormwater management. The Board of Public Works shall include these requirements in any regulations that it issues. The Board of Public Works may establish additional requirements by regulation to further the purposes and objectives of this chapter, so long as they are not less stringent than those in the MS4 general permit for Massachusetts.

§ 194-21. Severability.

If any provision, paragraph, sentence, or clause of this chapter or the application thereof to any person, establishment or circumstance shall be held invalid for any reason, all other provisions shall continue in full force and effect to the extent permitted by law.